

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: January 22, 1996

TO: Frederick Calatrello, Regional Director, Region 8

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Centra, Inc., Central Transport, Central Cartage, Centra, Inc., Central Transport, Central Cartage Case 8-CA-27654, Case 8-CA-27564

240-3367-1731, 596-9675, 601-7596-4200, 601-7596-6400

This case was submitted for advice as to whether the Employer violates Section 8(a)(5) and (1) by refusing to recognize and bargain with Teamsters Local Union 407, which was awarded representational rights by the International Union, where the Employer is subject to outstanding Board and court orders requiring it to recognize and bargain with Teamsters Local Union 964.

FACTS

The underlying facts are set forth in the prior Advice Memorandum in this case, dated August 5, 1993. That memorandum noted that outstanding Board and court orders ⁽¹⁾ ran in favor of Teamsters Local 964. However, there was an internal conflict between that local union and Teamsters Local 407, which had assumed some representational responsibilities on behalf of the affected employees during the period when the Employer had refused to deal with Local 964. After Local 407 filed a jurisdictional disputes claim with the Teamsters' General Executive Board, the International Union awarded jurisdiction over the affected employees to Local 407, which then demanded that the Employer recognize and bargain with it. At the time that the prior Advice Memorandum issued, Local 964 had neither agreed to abide by the Teamsters jurisdictional award nor disclaimed its interest in representing the affected employees. Because Local 964, the Charging Party in the underlying unfair labor practice case, had not disclaimed its right to represent the affected employees, we concluded that it was still the employees' collective-bargaining representative and that the Employer was obligated to recognize and bargain with it. In reaching this conclusion, we noted the Board's policy of accommodating decisions rendered pursuant to no-raid agreements such as the one used by the Teamsters International in this case. ⁽²⁾ We noted, however, that awards under no-raid agreements are not self-enforcing and the Board does not honor such awards unless the union ordered to disclaim interest in representing the contested bargaining unit actually does disclaim. ⁽³⁾ Therefore, because Local 964 continued to assert its representational rights, we concluded that the Employer was obligated to recognize and bargain with Local 964. We stated, however, that the case should be resubmitted to the Division of Advice if Local 964 formally disclaimed interest in representing the unit in question.

Thereafter, the Employer recognized and bargained with Local 964. Local 407 asked the Teamsters Executive Board to stay its decision awarding jurisdiction to Local 407, noting the related Board and court decisions. The Executive Board granted the requested stay on February 1, 1994. However, on February 11, 1994, the Employer filed a motion for declaratory relief against Teamsters Locals 407 and 964 and the NLRB, in U.S. District Court for the Northern District of Ohio, asking the court to determine the proper collective-bargaining representative. That case is still pending. On March 18, 1994, Teamsters Local 964 notified the International's Executive Board that it was disclaiming all representational rights to the unit employees once the underlying cases were resolved.

The Employer has since paid discriminatees in the underlying cases approximately \$5 million in backpay. The Board has also held that the Employer owes approximately \$1.3 million to union trust funds. ⁽⁴⁾

On June 5, 1995, Teamsters Local 407 requested that the Executive Board lift its stay in the jurisdictional dispute; the

Executive Board did so on June 30, 1995. Local 407 then requested recognition from the Employer, which refused, stating that the Executive Board could not modify the Sixth Circuit order running in favor of Local 964. On September 18, Local 964 sent the Employer a letter disclaiming all representational rights to the affected employees and stating that it recognized the International Union's jurisdictional award in favor of Local 407. On September 26, the Employer responded that it would not recognize any jurisdictional change until directed to do so by the NLRB or a federal court.

During the period described above, the Employer signed two collective-bargaining agreements with Local 964 under the Teamsters National Master Freight Agreement, which would remain applicable to unit employees, regardless of whether they are represented by Local 964 or Local 407.

Local 407 has filed a representation petition in Case 8-RC-15994. An individual employee has also filed a petition, Case 8-RD-1659, which asserts that Local 964 is not the Section 9(a) representative.

ACTION

We conclude that the Region should dismiss the instant Section 8(a)(5) charge, absent withdrawal, and process the R petitions.

Initially, we reject the Employer's contention that, because of the court-enforced Board order requiring it to bargain with Local 964, only a federal court may order it to bargain with Local 407. The cases that the Employer cites⁽⁵⁾ in support of its argument state that the Board is barred from modifying its underlying order once a circuit court has enforced the Board's order, but before the respondent has complied with that order. However, we conclude that the Employer has complied with the Board and court orders.⁽⁶⁾ Thus, the cases that the Employer cites are not applicable. Furthermore, it is well established that a federal district court lacks jurisdiction to enjoin or make determinations in Board proceedings.⁽⁷⁾ Furthermore, Local 964 has effectively disclaimed representational rights. The Board has held that an employer is not obligated to recognize and bargain with a union that has disclaimed interest in representing unit employees.⁽⁸⁾ Thus, the Employer has no obligation to recognize and bargain with Local 964.

Thus, this case now raises the question of how the current collective-bargaining representative of the unit employees may be identified.

We conclude that the most effective way to answer this question is to dismiss the Section 8(a)(5) charge filed by Local 407, absent withdrawal, and to process the pending R petitions.

This case raises the novel question of whether, after an international union has made a decision to transfer jurisdiction from one local to another, the second local succeeds to the representational rights of the first local. Local 407 is different from and not merely a continuation of Local 964. Thus, the case is arguably distinguishable from those cases involving union affiliations and/or mergers, where the arguably "new" union is merely a continuation of and therefore a successor to the predecessor union if there is "continuity of identity."⁽⁹⁾ Because of the pending R petitions, we do not have to decide the novel question of whether there is merit to any claim that, under Section 8(a)(5), the Employer must recognize and bargain with Local 407 in the circumstances set forth above.⁽¹⁰⁾

Instead, the Board can clearly determine the representational wishes of unit employees. The best method of ascertaining employees' wishes in this case is to process the pending petitions. Such a procedure would be consistent with Grinnell Fire Protection, supra. In that case, the Board held that an international union does not violate Section 8(b)(1)(A) by transferring jurisdiction over employees from one local to another local so long as the transfer is motivated by legitimate reasons. Although the case did not involve the question of whether an employer is then obligated to recognize and bargain with the second local, the Board noted, 235 NLRB at 1168-69, and specifically agreed with, the argument that where an international union transfers jurisdiction from one local to another, the Board may not, "in certain circumstances, amend a certification to substitute one union for another or compel an employer to recognize a substituted union without an election...."⁽¹¹⁾ Consistent with that statement, we conclude that the appropriate way to handle the dispute in this case is to dismiss the Section 8(a)(5) charge, absent withdrawal, and to process the pending election petitions.

B.J.K.

¹ D & S Leasing, 299 NLRB 658 (1990), enfd. sub nom. NLRB v. Centra, Inc., 954 F.2d 366 (6th Cir. 1992).

² See, e.g., Mack Trucks, 209 NLRB 1003 (1974). See also Meat Cutters Local 158 (Eastpoint Seafood Co.), 208 NLRB 58 (1973); Teamsters Local 42 (Grinnell Fire Protection Systems Co.), 235 NLRB 1168 (1978), affd. sub nom. Dycus v. NLRB, 615 F.2d 820 (9th Cir. 1980).

³ See Royal Iolani Apartment Owners, 292 NLRB 107 (1988).

⁴ Centra, Inc., 314 NLRB 814 (1994), petition for enforcement pending before the Sixth Circuit.

⁵ NLRB v. Coca-Cola Bottling Co. of Buffalo, 55 F.3d 74 (2d Cir. 1995); W.L. Miller Co. v. NLRB, 988 F.2d 834, 142 LRRM 2795 (8th Cir. 1993).

⁶ The dispute concerning the Employer's obligation to the union trust funds is being handled separately and is now before the Sixth Circuit.

⁷ See Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938).

⁸ See Sisters of Mercy Health Corp., 277 NLRB 1353 (1985).

⁹ NLRB v. Financial Institution Employees, Local 1182, Food & Commercial Workers Local, 475 U.S. 192, 199-200 (1986). See, e.g., Western Commercial Transport, 288 NLRB 214 (1988).

¹⁰ Therefore, there is no reason to apply a "continuity of identity" analysis to this case.

¹¹ The Board did not identify the circumstances. See also Hermet, Inc., 222 NLRB 29 (1976), which found that an employer violated Section 8(a)(1), (2) and (3), and a union violated Section 8(b)(1)(A) and (2) by entering into and enforcing a contract where, over the employees' objections, the international union had transferred to the local union the bargaining rights of another local union affiliate during the term of the latter's contract with the employer. The ALJ noted, at 37, that the Board normally has refused to amend certifications to reflect jurisdictional awards by international unions absent evidence that employees consented to the change in representative. The ALJ distinguished Associated General Contractors of America, Evansville Chapter, 182 NLRB 224 (1970), where the Board held that an employer and a union did not violate the Act by entering into a collective-bargaining agreement, after an international union had transferred jurisdiction from another local union to the charged local union. The ALJ noted that, unlike the facts in Hermet, there was no evidence that employees were opposed to the transfer, and that the transfer occurred in the construction industry, where employees are transient.